

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYCO FIRE PRODUCTS LP d/b/a)
TYCO FIRE SUPPRESSION & BUILDING)
PRODUCTS,)
Plaintiff/Counterclaim Defendant,) Civil Action
v.) No.: 10-cv-4645 (ER)
VICTAULIC COMPANY,)
Defendant/Counterclaim Plaintiff.)

)

**DEFENDANT'S MOTION FOR LEAVE TO FILE A SURREPLY
BRIEF REGARDING PLAINTIFF'S MOTION TO DISMISS AND STAY**

Defendant Victaulic Company ("Victaulic") respectfully moves for leave to file a surreply brief with regard to Plaintiff's Motion to Dismiss Defendant's Non-Infringement and Invalidity Counterclaims and to Strike Defendant's Defenses [Docket No. 64]. The proposed surreply brief is attached as Exhibit A.

The grounds for this motion are that Plaintiff's Reply Brief in Support of its Motion to Dismiss Defendant's Non-Infringement and Invalidity Counterclaims and to Strike Defendant's Defenses ("Proposed Reply Brief") [filed under seal], which is attached to Plaintiff's Motion for Leave to File a Reply Memorandum of Law on Tyco's Motion to Dismiss Defendant's Non-Infringement and Invalidity Counterclaims and to Strike Defendant's Defenses [Docket No. 72], raises many new issues that are not addressed in Tyco's initial brief. For example, Tyco, in the Proposed Reply Brief, for the first time submits a covenant not to sue and submits that the

covenant not to sue divests this Court of subject matter jurisdiction over the contested counterclaims and affirmative defenses.

Victaulic respectfully submits that it should be permitted the opportunity to respond to those new issues via the attached surreply brief because if the arguments had been made in Tyco's initial brief, as they should have been, Victaulic would have addressed them in its initial opposition brief. The arguments go to the core issue of whether certain counterclaims should be dismissed and certain affirmative defenses should be stricken.

For at least the above reasons, Victaulic respectfully submits that this motion should be granted and that the attached surreply brief, attached as Exhibit A, should be entered in the record and considered by the Court.

Date: December 21, 2011

Respectfully submitted,

/s/ Marc S. Segal

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CERTIFICATE OF SERVICE

This is to certify that a copy of the DEFENDANT'S MOTION FOR LEAVE TO FILE A SURREPLY BRIEF REGARDING PLAINTIFF'S MOTION TO DISMISS AND STAY was served by email pursuant to the agreement between the parties and via the Court-generated ECF email notice on this 21st day of December, 2011, on:

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/s/ Andrew M. Stern
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